

## NEEDHAM PLANNING BOARD MINUTES

September 1, 2009

The regular meeting of the Planning Board held in the Selectmen's Meeting Room at the Town Hall, was called to order by Jeanne McKnight, Chairman, on Tuesday, September 1, 2009 at 7:30 p.m. with Messrs. Warner, Ruth, Jacobs and Eisenhut as well as Planning Director, Ms. Newman and Recording Secretary, Ms. Kalinowski.

### Public Hearings

**7:30 p.m. – Major Project Site Plan Review No. 2009-04: Danversbank, One Conant Street, Danvers, Massachusetts, Petitioner (Property located at 827-835 Highland Avenue, Needham, MA).** *Note: This Public Hearing has been continued from the August 11, 2009 meeting of the Planning Board.*

Mr. Ruth noted he was not participating and left the room. Roy Cramer, representative for the applicant, noted he made the presentation at the last meeting. The issue was they wanted the entrance drive from 18 feet to 16 feet. Ms. Newman was to talk to the Fire Department. They prefer 18 feet. Ms. McKnight asked if it would be 2-way. Mr. Cramer stated it would not be. It would be one way in at 18 feet and the exit is 12 feet wide. Ms. Newman noted they could probably go down to the lower width but the engineer feels it is a policy decision. Mr. Cramer stated they are neutral on the issue. The bench is to be put in and the lights will go back 3 feet. Mr. Jacobs made the following comments: Section 1.2, page 3 should say "the site is..." and on page 9, Section 3.25e, strike "in".

Upon a motion made by Mr. Eisenhut, and seconded by Mr. Jacobs, it was by the four members present unanimously:  
VOTED: to close the hearing.

Upon a motion made by Mr. Eisenhut, and seconded by Mr. Jacobs, it was by the four members present unanimously:  
VOTED: to grant a Major Project Site Plan Special Permit under Section 7.4 of the By-Law.

Upon a motion made by Mr. Eisenhut, and seconded by Mr. Jacobs, it was by the four members present unanimously:  
VOTED: to grant the requested Special Permit under Section 5.1.1.5, to waive certain parking plan and design requirements as set forth in Section 5.1.3, more specifically, in Section 5.1.3(j), to waive the five (5) foot parking/maneuvering aisle setback requirement from the building line with respect to the maneuvering aisles leading to the teller window on the west side of the building; in Section 5.1.3(k), to waive the associated four (4) foot wide landscaped buffer requirements pertaining to the relief requested from Section (j), the four (4) foot landscape buffer requirement with respect to the handicap parking space on the north side of the building, and the four (4) foot landscape buffer requirement at the rear property line, all as shown on the plan.

Ms. Newman asked about the bike racks. Mr. Cramer noted they were not planning to put in bike racks but the bank would like to put them in the front. They are happy to put them in. Ms. Newman noted they will do it as a plan modification to show where they will go. Ms. McKnight noted on page 6, Section 2.1 a section should be added for bike racks. Ms. Newman will add "d".

Upon a motion made by Mr. Eisenhut, and seconded by Mr. Jacobs, it was by the four members present unanimously:  
VOTED: to adopt the decision as drafted by the Planning Director with the modifications recently mentioned with the exception of bike racks.

Mr. Ruth returned to the meeting.

### Appointments

**7:45 p.m. – Charles Laffey – Proposed Amendment to Major Project Site Plan Special Permit No. 2007-09: High Rock School (Property located at 77 Ferndale Avenue, Needham, MA).**

Charles Laffey, representative for the town, noted they want to install a solar panel. It was originally to go on Pollard but due to the bad roof they decided to put it on High Rock. Ms. Newman clarified this is a preliminary conversation. Mr. Laffey noted it would be a visible curtain. There are a number of roof top units on High Rock now. The curtain would support an array that is proposed. Mr. Warner commented that seeing it is of the essence it makes good sense. Carys Lustig noted the unit does not generate a lot of energy. The benefit is it can be seen. People who contributed to it would like to see it visible and as part of the school system. The panel will report how much energy it is using and the students would be able to get this information. Mr. Jacobs asked how is it going to have an impact. Mr. Laffey noted the real time basis is real time generation that will be in the web for students. The student will be able to see the capability capacity of solar by mounting on curtains that will generate year round. If at a low angle snow will interfere with generation. This is the most efficient plan. Mr. Jacobs asked how much the cost was. Ms. Lustig noted just under \$25,000. Ms. McKnight asked if the teachers are aware and if it was going to be included in the curriculum. Ms. Lustig stated it would be included and she will be talking to them this week.

#### **ANR Plan – 983 Webster Street, Needham, MA.**

Ms. Newman noted this is an existing house on one lot. They are proposing to demolish the house. It was divided into 2 lots but they have decided to eliminate the internal lot line which puts it back as it was prior to the previous plan on record. This will keep it as is. It needs a note that they make no determination on compliance with zoning. Ms. McKnight noted the line is still there. They should say the purpose is to eliminate the internal lot line or have it as a dotted line rather than solid. Ms. Newman feels she is correct. She will send it back and have it changed. Mr. Jacobs agrees. It needs to show no line in the middle. Ms. Newman will get it back to the surveyor to eliminate the internal lot line.

#### **8:00 p.m. – Roy A. Cramer – Zoning use characterization of proposed “Cupcake Bar” (Property located at 70 Chestnut Street, Needham, MA).**

Mr. Cramer noted that before filing the Major Project Site Plan he would like to go over a zoning issue. Mr. Laliberte would like to operate a cupcake bar. The sole product is cupcakes – customized and high quality. There will be 20-25 seats with 4-6 employees. People will come in, sit down and eat. The other part is orders for parties. They want to stay open in the evening for dessert. The primary target is teenagers during the day. Mr. Cramer noted this is next to the new Mexican Restaurant. He noted one option is to use the zoning category that is retail sales of ice cream, etc. on page 42 of the Zoning By-Laws. Cupcakes are a similar product and a Special Permit use. It is the type of product. The Spasso decision had Section 3.1, ice cream, yogurt, etc. and other similar products, cakes, baked goods, etc. The bakery is a food retail place and over the years had new uses with accessory uses as eat in. The primary use is food retail with accessory take out. He is unsure at this point which will be the primary use -- eat in/take out or retail. He added the food uses in the By-Law are behind what reality is. He would like to use the Spasso model. Mr. Jacobs noted he would need a special permit either way. He noted baked goods are allowed as a matter of right and why not go that route. Mr. Cramer stated they will choose eat in/take out accessory use and will need a special permit. Ms. Newman stated the due process is the same. Mr. Cramer stated he did not want to be in violation of the special permit. Mr. Jacobs clarified he needs to anticipate the mix. Mr. Cramer stated they will draw the line by calling it a treat/sweet. Mr. Eisenhut asked if they could distinguish it by an isolation product. He asked how they prevent the next tenant from adding products. Ms. McKnight noted it sounds like a bakery to her. It will bake cupcakes on site and sell them on site. Mr. Jacobs noted they will continue the “legal fiction” and go with Option 2 – the bakery option. He would hate to see him put in the position of the accessory use turns out to be the primary use. Mr. Cramer noted it is unclear at this time but asked if the Board could draft a decision so they do not have to worry about this. Ms. Newman stated take out as the primary use is not allowed. Mr. Jacobs added they want to avoid potential mischief but it seems they can pinpoint accessory and primary use at this time. Mr. Ruth stated he is favorably disposed to issuing a special permit of some sort but is not sure how to fashion it. It would give latitude but set rules within.

Mike Tesler, a retail consultant, noted this is a well developed business plan. This replaces ice cream for a warm cupcake on a cold day. He will get figures from some other shops in the area – how they define take-out, what percentages of take-out and retail they have. Joyce Moss stated eating habits have changed and the way people get their food has changed. Mr. Eisenhut commented it is archaic use table. All agreed it is a good idea.

#### **8:30 p.m. – Steve Popper – Town Hall Renovation Parking Discussion.**

Douglas Manley reviewed the 3 parking options. He noted the common focuses on how they treat Garrity Way. They are moving the front steps outward and upward to line up with the first floor and adding a ramp for handicap access. The parallel parking will continue on Garrity but they will lose 2 spaces. They will have 9 spaces. The first option is a one-way drive through the lot with 60% angle parking. There will be 10 spaces and people will back out to exit on Highland Avenue. There will be the same site lighting as approved on Chapel Street and a 6-foot walkway aisle in the drive flush with the aisle. Mr. Jacobs asked if there would be an entrance to the building from the parking area. Mr. Manley noted there will be no entrance on the parking side. He noted this is the L1 layout. There are issues with the existing curb cut on Highland Avenue. They will add a new cut on Chapel to produce a drive-thru. This will require a zoning By-Law amendment or variance relief from the site parking requirement and setback relief. Ms. Newman noted curb cuts are not allowed. In Option L2 they will widen the existing curb cut and have 60% angle parking. Town Hall and the bank will share the same exit curb cut but the downfall is the parking will be against the building. They will also need a variance to increase the bank curb cut to 29 feet.

Ms. Newman informed the Board Bill McQuillan called her to say he was supportive of this proposal. Steve Popper noted he told him he would prefer L1 and had no comments on L2. Wendall Kaslow noted the functionality of L1 was the better plan. Mr. Manley stated in Option 3 they maintain the curb cut on Highland Avenue, have one direction and a K turn at the end. There will be no added curb cuts. Mr. Popper noted there was a safety question with this option with the backing and turning. Mr. Warner stated it is no good to be having cars backing up into pedestrian areas. They are maximizing space at 60% angles. Mr. Eisenhut stated they would need Town Meeting approval. Mr. Ruth agreed Town Meeting has been supportive but you never know. They should try to avoid this. He asked if they have tried the bank entrance on Chapel Street to come in then go out the Highland Avenue exit. Mr. Kaslow stated that was not well received. Mr. Ruth suggested they use an S entrance from the bank curb cut. Mr. Kaslow noted they have not suggested that. He stated they think L1 is the one they like best. Mr. Eisenhut commented a variance is not the route to go. He suggests going through the public hearing process. Ms. McKnight noted she is against another cut through. They are trying to eliminate cut throughs. She feels they should work with L3. Town Manager Kate Fitzpatrick noted they are looking at the positive features of the downtown study. If they go with L3 they are down to 5 spaces from 26. Mr. Kaslow noted increasing the width of the planting is desirable but raises issues. If they move the drive over to add to the plantings, does that lose conformity. Ms. Newman noted they would grant a wavier. They could submit 2 plans, get approval for both and choose if Town Meeting changes the zoning. Mr. Popper stated they need an avenue to how they can proceed to present for site plan review. All agreed with Ms. Newman that a plan with 2 submittals is best. Mr. Popper clarified the Town Commons becomes part of the site plan review now. Ms. Newman stated it did but no survey needs to be done.

**Occupancy Permit – Major Project Site Plan Review No. 2004-01: Needham High School, Town of Needham, 470 Dedham Avenue, Needham, MA, Petitioner (Property located at 609 High Street, Needham, MA).**

Upon a motion made by Mr. Jacobs, and seconded by Mr. Ruth, it was by the five members present unanimously:  
VOTED: to authorize the Planning Director to issue an Occupancy Permit pending receipt and review of necessary documents.

**ANR Plan – 29 Ardmore Road, Needham, MA.**

Ms. Newman noted they propose to demolish an existing house on the lot. They will create a new lot line to create 2 lots. There will be a note regarding the zoning violation on the plan and also that a separate parcel is a non-buildable lot. Victor Doherty stated he is the property manager and his mother owns the property. He has a buyer for a triangle of land and plans to convey it to the neighbor. They have 21,400 square feet and can allow the triangle to be conveyed. This is an optimized plan for all parties involved. There is a retaining wall next to the pool in the back. Rick Mann, attorney for the owners of 17 Ardmore Road, noted the approximate 10 foot differential over 20 feet is the reason for the retaining wall. If the property is used for 20 years or more they become the owners of the property. He shows 582 square feet are owned by the Holman's due to adverse possession so the Doherty's do not have 10,000 square feet. He noted 81P allows them not to make a decision tonight. They have 21 days. He feels they should not reject or defer until ownership of the property is determined. Mr. Doherty stated a retaining wall is not a boundary. It was put on the property so they could maintain it. Mr. Eisenhut noted they are entitled to go with what is on record. They cannot deny on an adverse possession claim. He asked what information will they have in 21 days that they do not have now. A motion was made to endorse the plan ANR. Mr. Ruth commented this was a neighbor dispute and

not relevant to them in the absence of a demonstrated hardship with a 2 week delay. Mr. Eisenhut withdrew his motion. A motion was made to consider this on 9/15/09. Ms. McKnight noted the parcel is to be conveyed to an abutting lot. The abutting lot should be shown. Ms. Newman noted both need to sign. Mr. Eisenhut commented he feels they have to endorse the plan as presented but is comfortable with deferring it. Ms. McKnight reiterated she wants to see the abutting property on the plan. This has been the policy.

Upon a motion made by Mr. Ruth, and seconded by Mr. Eisenhut, it was by the five members present unanimously:  
VOTED: to consider this on 9/15/09.

**Endorsement of Decision: Amendment to Major Project Site Plan Review No. 2008-08: V.S.A. LLC, 1105 Massachusetts Avenue, Suite 11G, Cambridge, MA 02138, Petitioner (Property located at 225 Highland Avenue, Needham, MA).**

The Board endorsed the decision.

**Occupancy Permit: Major Project Site Plan Review Amendment No. 2005-07: Needham, Gateway, LLC. 1208 VFW Parkway, Boston, MA 02132, Petitioner (Property located at 100 Highland Avenue, Needham, MA).**

**Bond Release: Major Project Site Plan Review Amendment No. 2005-07: Needham Gateway, LLC, 1208 VFW Parkway, Boston, MA 02132, Petitioner (Property located at 100 Highland Avenue, Needham, MA).**

Rick Mann, representative for the applicant, noted Town Meeting resolved some of their encroachments -- all but the front. They bought a piece of land from the Commonwealth of Mass. They got an act of legislature and received a 32 square foot parcel in exchange for a 29 square foot parcel. This has been completed and recorded. The surveyor certificate is with the Planning Board. They would like to have the \$195,000 surety bond returned. Mr. Eisenhut asked if there were any issues. Ms. Newman noted she has the As-built and a letter from the engineer.

Upon a motion made by Mr. Jacobs, and seconded by Mr. Ruth, it was by the five members present unanimously:  
VOTED: to agree to an issuance of a Certificate of Occupancy.

Upon a motion made by Mr. Jacobs, and seconded by Mr. Ruth, it was by the five members present unanimously:  
VOTED: to approve the release of the bond.

**Request to authorize review and approval of final plans for building permit: Major Project Site Plan Review No. 2009-03: FitFuture LLC d/b/a Koko Fit Club, 844-850 Highland Avenue, Needham, Massachusetts, Petitioner (Property located at 850 Highland Avenue, Needham, MA).**

Roy Cramer, representative for the applicant, noted the signed decision appeal is over this Friday. They have discovered the need to extend the handicap ramp another 6 feet along Highland Avenue. They have done revised plans with the extension and filed them with the Planning Director and the DPW. Everyone has signed off. It cannot be endorsed until after Friday. He feels it is a minor modification. He would like 2 things. He would like approval of a minor modification as de minimus and he would like the Board to delegate the authority to the Planning Director to review and approve the final plans.

Upon a motion made by Mr. Ruth, and seconded by Mr. Jacobs, it was by the five members present unanimously:  
VOTED: to approve the amendment and grant the authority to review and approve the final plans.

**Temporary Occupancy Permit: Major Project Site Plan Review No. 2007-10: Beth Israel Deaconess Hospital Needham, 148 Chestnut Street, Needham, MA, Petitioner (Property located at 148 Chestnut Street, Needham, MA).**

Andraya Umbardi, representative for the applicant, noted the landscape and screening plans have been filed with the Planning Board and the DPW. The hospital came up with 2 alternatives. The utility company said no to painting the boxes. They do not want a fence but if it is 10 feet from the door and 4 feet from non-door sides they are in compliance. They do not think a fence will be fully needed on the Chestnut side. They will put a panel between with bollards. Mr. Jacobs commented it would work but a fence is not as attractive as plantings. He noted the sidewalk

stops and asked if part is not done and if this was part of the escrow money. Ms. Umbardi noted that is part of the off-site improvements and it will be asphalted. Ms. Newman added it is bonded. Mr. Jacobs commented across from Friendly's there is a third piece of NStar equipment. Ms. Umbardi noted NStar says it is not theirs and the town says it is not theirs. Ms. Newman clarified the town records show it is NStars but they deny it. Mr. Jacobs noted there is landscaping around it from that to the drive and commented they could use a tree. It is all sod and could use something. He feels they could authorize a temporary. Ms. Newman noted the cornice is inside the setback area. They could intrude up to one foot into the setback. Mr. Cramer asked if a cornice is exempt from the setback or if the provisions of underlying districts govern. There is nothing in the definition. It is an 8 foot long cornice. Ms. McKnight asked what the Building Inspector thinks of this and has anyone measured. Mr. Cramer noted a question was raised but he does not think anyone has gone out to check it. Ms. Newman noted it requires 25 and it is 24.7. Kathy Lewis, an abutter and Precinct B Town Meeting Member, noted they asked for 20 feet and were told 25 feet. She clarified if you measure from the front at 25 feet you are in the traveled roadway. She asked where are they measuring from – 25 feet from where. Mr. Cramer stated the sidewalk is owned by the hospital. Mr. Ruth noted the plan shows 24.7 feet to the property line then a little gap between the property line and the granite curb. The plan is saying approximately 26.7 feet between the structure and the granite curb of the street. Ms. Newman stated she would need a surveyor to check the length. Mr. Eisenhut noted he was ok with the cornice. Ms. Newman noted the Building Inspector is satisfied with the definition and asked to run it by the Planning Board.

Upon a motion made by Mr. Ruth, and seconded by Mr. Eisenhut, it was by the five members present unanimously:  
VOTED: to communicate back to the Building Inspector they are comfortable with that interpretation of the By-Law.

Mr. Eisenhut noted they should ask the Building Inspector if there is a way to reasonably determine if the plan is accurate in the distance between the side and edge of property. Ms. McKnight noted they should ask the surveyor to work with the Town Engineer to indicate the method he used to determine the distance. Mr. Ruth stated he thinks they have already dealt with this even before there was a 4 story building. He does not know where they are going with this. It has already been dealt with. Ms. McKnight stated the signed plan leads her to believe no one would put a signature on it unless it is correct. Mr. Jacobs noted it is very confusing to see where the lot line is. Ms. Lewis is right to be confused. Clearly the boundary line is not where they thought it was. Ms. McKnight noted they would have asked it be moved back beyond 25 feet. It should have been called to their attention at the time. Ms. Lewis noted she feels duped as a Town Meeting Member. She thanked the Board for hearing her out. She just wanted to be heard but she thinks they dropped the ball. Ms. Newman noted they could grant a temporary that would expire next week if they are not in compliance or do not have the FAR certification. Mr. Cramer noted he has prepared a standard bond agreement. They will give a check for 135% of the amount and noted December 31 would be a good date. Ms. Newman noted they could authorize her to issue a temporary Certificate of Occupancy with an amount approved by the Board and Town Counsel approval. It could run to the end of October with an automatic renewal. They could tie the sidewalk repairs to a date of October 31. Mr. Ruth noted there is an old shed on the Lincoln Street side that looks institutionalized of late due to landscaping put up recently. It is starting to look permanent. Mr. Cramer noted he does not know. Ms. Umbardi noted they plan to move it to the back. Mr. Ruth noted the little shed had no permit. Ms. Umbardi will look into it.

Upon a motion made by Mr. Eisenhut, and seconded by Mr. Jacobs, it was by the five members present unanimously:  
VOTED: to authorize the Planning Director to authorize the issuance of a temporary Certificate of Occupancy through October 31, 2009 subject to the conditions discussed.

**Request to Withdraw: Transfer of Permit: Major Project Site Plan Review No. 1998-07: Sweet Rue's, Ltd., Ruth Armstrong, President, 56 Highgate Road, Needham, MA, Petitioner to Philip Schein, Petitioner (Property located at 1056 Great Plain Avenue, Needham, MA).**

Ms. Newman noted they have decided not to go forward with this.

Upon a motion made by Mr. Eisenhut, and seconded by Mr. Jacobs, it was by the five members present unanimously:  
VOTED: to allow them to withdraw the application.

**Discussion: Sam Bass Warner and update of program ideas presented to Park & Recreation on July 27, 2009.**

Mr. Warner noted Dan Matthews is opposed to walking around the edge of Charles River. He noted this depends on the Selectmen and Park and Recreation doing something. A lot feel there are 22 parcels of private property and we should not interfere with it. He does not see how they can move on this unless there is some town policy to follow. Mr. Ruth noted a trail study has been done and if there has been any discussion of this. Mr. Warner noted no, it is a question of education. Park and Recreation underfunded it and do not have the staff or the money to do the things he has mentioned.

#### **Planning Board Appointment to Council of Economic Advisors.**

Ms. Newman noted this was a recommendation for an appointment. The Selectmen make the actual appointment. She recommends Mr. Jacobs be appointed to the committee since he has already been going to the meetings. Mr. Jacobs had no argument.

Upon a motion made by Mr. Ruth, and seconded by Mr. Eisenhut, it was by the five members present unanimously:  
VOTED: to recommend Mr. Jacobs be the Planning Board Appointment.

#### **Correspondence**

Ms. McKnight noted the letter to the editor about the train crossings. She had thought about a conflict of interest. She is going to abstain from making comment to the Town Clerk's Office. Mr. Eisenhut noted this was distinct from the financial interest of the town as a whole.

Upon a motion made by Mr. Jacobs, and seconded by Mr. Eisenhut, it was by the five members present unanimously:  
VOTED: to adjourn the meeting at 11:30 p.m.

Respectfully submitted,  
Donna J. Kalinowski, Notetaker



Ron Ruth, Vice-Chairman and Clerk